

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARLON PALMER,

Plaintiff,

v.

JOHN ZANONI,

Defendant.

Case No.: 1:23-cv-00960-NODJ-SKO (PC)

**FINDINGS AND RECOMMENDATIONS TO
DISMISS ACTION FOR FAILURE TO
OBEY COURT ORDERS AND FAILURE TO
PROSECUTE**

14-DAY OBJECTION DEADLINE

Plaintiff Marlon Palmer is proceeding pro se and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

I. PROCEDURAL BACKGROUND

On February 9, 2024, this Court issued its First Screening Order. (Doc. 18.) The Court found Plaintiff's complaint fails to state a claim upon which relief can be granted. (*Id.* at 4-8.) Plaintiff was ordered to file a first amended complaint or a notice of voluntary dismissal within 21 days of the date of service of the order. (*Id.* at 9.) Although more than 21 days have passed, Plaintiff has failed to file either a first amended complaint or a notice of voluntary dismissal.

II. DISCUSSION

The Local Rules, corresponding with Federal Rule of Civil Procedure 11, provide, "[f]ailure of counsel or of a party to comply with . . . any order of the Court may be grounds for the imposition by the Court of any and all sanctions . . . within the inherent power of the Court."

1 Local Rule 110. “District courts have inherent power to control their dockets” and, in exercising
2 that power, may impose sanctions, including dismissal of an action. *Thompson v. Housing Auth.*,
3 *City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a
4 party’s failure to prosecute an action, obey a court order, or comply with local rules. *See, e.g.*,
5 *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with a
6 court order to amend a complaint); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130-31 (9th Cir.
7 1987) (dismissal for failure to comply with a court order); *Henderson v. Duncan*, 779 F.2d 1421,
8 1424 (9th Cir. 1986) (dismissal for failure to prosecute and to comply with local rules).

9 In determining whether to dismiss an action, the Court must consider several factors:
10 (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its
11 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
12 cases on their merits; and (5) the availability of less drastic sanctions. *Henderson*, 779 F.2d at
13 1423; *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988).

14 Plaintiff has not filed a first amended complaint as ordered or a notice of voluntary
15 dismissal. The Court cannot effectively manage its docket if Plaintiff ceases litigating his case.
16 Thus, the Court finds that both the first and second factors—the public’s interest in the
17 expeditious resolution of litigation and the Court’s need to manage its docket— weigh in favor of
18 dismissal. *Carey*, 856 F.2d at 1440.

19 While the risk of prejudice to defendants is a lesser factor here because the named
20 defendants have not appeared in the action, a presumption of harm or injury arises from the
21 occurrence of unreasonable delay in prosecuting an action. *See Anderson v. Air W.*, 542 F.2d 522,
22 524 (9th Cir. 1976). Plaintiff’s failure to file a first amended complaint or a notice of voluntary
23 dismissal amounts to an unreasonable delay in prosecuting this action. Therefore, the Court finds
24 the third factor—a risk of prejudice to defendants—weighs in favor of dismissal. *Carey*, 856 F.2d
25 at 1440.

26 The fourth factor usually weighs against dismissal because public policy favors
27 disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002). However,
28 “this factor lends little support to a party whose responsibility it is to move a case toward

1 disposition on the merits but whose conduct impedes progress in that direction.” *In re*
2 *Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217, 1228 (9th Cir. 2006)
3 (citation omitted). Here, Plaintiff is failing to move this case forward by not filing an amended
4 complaint or a notice of voluntary dismissal. And he is impeding its progress by failing to obey
5 court orders. Thus, the Court finds the fourth factor—the public policy favoring disposition on the
6 merits—also weighs in favor of dismissal. *Carey*, 856 F.2d at 1440.

7 Finally, the Court’s warning to a party that failure to obey the court’s order will result in
8 dismissal satisfies the “considerations of the alternatives” requirement. *Ferdik*, 963 F.2d at 1262;
9 *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d at 1424. Here, the screening order expressly
10 warned: “**If Plaintiff fails to comply with this order, the Court will recommend that this**
11 **action be dismissed, without prejudice, for failure to obey a court order and for failure to**
12 **prosecute.**” (See Doc. 18 at 9, emphasis in original.) Additionally, Plaintiff was previously
13 warned that a failure to obey courts may result in dismissal of the case. (See Doc. 2 at 1 [First
14 Informational Order In Prisoner/Civil Detainee Civil Rights Case].) Thus, Plaintiff had adequate
15 warning that dismissal could result from his noncompliance with Court orders. Moreover, at this
16 stage of the proceedings, there is little available to the Court that would constitute a satisfactory
17 lesser sanction while protecting the Court from further unnecessary expenditure of its scarce
18 resources. Therefore, the fifth factor—the availability of less drastic sanctions—weighs in favor
19 of dismissal. *Carey*, 856 F.2d at 1440.

20 In sum, it appears that Plaintiff has abandoned this action. More than 21 days have passed
21 following the Court’s screening order directing Plaintiff to file a first amended complaint or a
22 notice of voluntary dismissal. Whether Plaintiff has failed to file an amended complaint or a
23 notice of voluntary dismissal intentionally or mistakenly, is inconsequential. It is Plaintiff’s
24 responsibility to comply with the Court’s orders.

25 III. CONCLUSION AND RECOMMENDATION

26 For the reasons stated above, the Court **RECOMMENDS** that this action be
27 **DISMISSED** without prejudice for Plaintiff’s failure to obey court orders and failure to
28 prosecute.

1 These Findings and Recommendations will be submitted to the district judge assigned to
2 this case, pursuant to 28 U.S.C. § 636(b)(1). **Within 14 days** of the date of service of these
3 Findings and Recommendations, a party may file written objections with the Court. The
4 document should be captioned, “Objections to Magistrate Judge’s Findings and
5 Recommendations.” Failure to file objections within the specified time may result in waiver of
6 rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v.*
7 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

8
9 IT IS SO ORDERED.

10 Dated: **March 8, 2024**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE